PUBLIC PROSECUTOR

v.

KRISHNAN SUBRAMANIAM & ANOR.

SUPREME COURT, KUALA LUMPUR
ABDUL HAMID OMAR LP
HASHIM YEOP SANI CJ (MALAYA)
AJAIB SINGH SCJ
[CRIMINAL REFERENCE NO. 3 OF 1988]
30 JANUARY 1989

ROAD TRAFFIC: *Reference under s. 66 Courts of Judicature Act 1964 - Whether prime mover (tractor) is a goods vehicle - Whether a prime mover drawing a semi-trailer is an articulated vehicle - Whether the prime mover, trailer and the load ought to be weighed together to determine the laden weight - Whether the maximum permissible laden weight refers to the combined weight of articulated vehicle and load.*

On 23 June 1980 a tractor drawing a trailer loaded with coal was stopped on suspicion of being overloaded. The total weight of the tractor and the trailer was found to be 26 tons 14 cwts and 25 lbs whereas the combined maximum laden weight allowed under the carrier's licences for the tractor and the trailer was 360 cwts (18 tons).

The 1st respondent who was the driver of the tractor and the 2nd respondent who was the holder of the carrier's licence were charged in the Magistrate's Court for exceeding the maximum permissible laden weight, an offence punishable under s. 120(2) of the Road Traffic Ordinance 1958. They were convicted and fined. The respondents appealed and the learned Judge allowed the appeal. He said that the only issue in the appeal was whether the two vehicles, namely the tractor and the trailer, should be weighed together to get the maximum permissible laden weight. He held that they were two separate vehicles and that since the vehicle could be uncoupled from one another the trailer should have been detached and weighed separately by itself.

By order of the Supreme Court dated 9 May 1988 the following questions were reserved for determination under s. 66 of the Courts of Judicature Act 1964:

1. Whether a prime mover (which is commonly referred to as a tractor) when used for the carriage of goods solely, is a goods vehicle within the definition of s. 2 of the Roads Traffic Ordinance 1958.

2. If the answer to question 1 is in the affirmative, whether a prime mover drawing a semi-trailer is an articulated vehicle as defined by r. 2 of the Motor Vehicles (Construction and Use) Rules 1959 (LN 170/1959);

3. If the answer to question 2 is in the affirmative, whether the prime mover, the trailer and the load ought to be weighed together to determine the laden weight of the articulated vehicle.

4. Whether the maximum permissible laden weight (MPLW) as specified in the condition attached to the trailer's carrier's licence refers to the combined weight of the articulated vehicle and the load of the said vehicle.

Held:

[1] The tractor comes within definition (b) of s. 2 of the Road Traffic Ordinance 1958 as it is a motor vehicle which was being used for the carriage of goods.

[2] The contents of the carrier's licences issued in respect of the tractor and the trailer must be read together. Reading the two licences together the tractor and trailer were quite rightly weighed together.

[3] In the event, all the four questions are answered in the affirmative and acting under s. 66(4) of the Courts of Judicature Act the convictions and fines imposed on the respondents by the learned Magistrate are upheld.

Case referred to:
Overseas Chinese Transport Company Ltd. v. Public Prosecutor [1965] MLJ 260

Legislation referred to:
Motor Vehicles (Construction and Use) Rules 1959, r. 2
Courts of Judicature Act 1964, s. 66
Road Traffic Ordinance 1958, ss. 2, 120(2)

For the applicant - Ng Aik Guan, DPP
For the respondents - Gurbachan Singh; M/s. Gurbachan Singh & Co.

JUDGMENT

Ajaib Singh SCJ:

This is a reference under s. 66 of the Courts of Judicature Act 1964. By order of the Supreme Court dated 9 May 1988 the following questions were reserved for determination:

1. Whether a prime mover (which is commonly referred to as a tractor) when used for the carriage of goods solely, is a goods vehicle within the definition of s. 2 of the Road Traffic Ordinance 1958.
2. If the answer to question 1 is in the affirmative, whether a prime mover drawing a semi-trailer is an articulated vehicle as defined by r. 2 of the Motor Vehicles (Construction and Use) Rules 1959 (LN 170/1959);
3. If the answer to question 2 is in the affirmative, whether the prime mover, the trailer and the load ought to be weighed together to determine the laden weight of the articulated vehicle.
4. Whether the maximum permissible laden weight (MPLW) as specified in the condition attached to the trailer's carrier's licence refers to the combined weight of the articulated vehicle and the load of the said vehicle.

The facts leading to this reference may be stated briefly. On 23 June 1980 an officer from the Road Transport Department stopped a tractor drawing a trailer which was proceeding from Ipoh towards Kuala Lumpur. The trailer was loaded with coal. Suspecting that the goods may be overloaded the officer had the tractor and the trailer weighed and found the total weight to be 26 tons 14 cwts and 25 lbs whereas the combined maximum laden weight allowed under the carrier's licences for the tractor and the trailer was 360 cwts (18 tons).

On 29 June 1981 the respondents were charged in the Magistrate's Court, Ipoh as follows:

1st respondent:

> That you on 23 June 1980 at about 10 p.m. at Simpang Pulai in the district of Kinta, in the State of Perak, being the driver of Tractor No. AP 8623 drawing Trailer No. T/A 1448, authorised to manager, Central Union Trading & Transport Co. Sdn. Bhd., No. 133, Jalan Pasir Puteh, Ipoh under carrier's licence No. CL 2799, did use the said vehicle in contravention of condition No. 1 attached to the said licence, to wit, you caused a load of 26 tons 14 cwts

and 25 lbs or an excess weight of 8 tons 14 cwts 25 lbs from the combined maximum permissible laden weight of 18 tons and that you have thereby committed an offence under s. 120(2) and punishable under the same section of the Road Traffic Ordinance 1958.

2nd respondent:

That you on 23 June 1980 at about 10 p.m. at Simpang Pulai in the district of Perak, being the holder of carrier's Licence No. CL 2799 issued in respect of Tractor No. AP 8623 drawing Trailer No. T/A 1448, did use the said vehicle in contravention of condition No. 1 attached to the said licence, to wit, that the laden weight of the said vehicle was 26 tons, 14 cwts 25 lbs or an excess weight of 8 tons 14 cwts 25 lbs from the combined maximum permissible laden weight of 18 tons and that you have thereby committed an offence under s. 120(2) and punishable under the same section of the Road Traffic Ordinance 1958.

At the end of the prosecution case Counsel for the respondents submitted that the respondents had no case to answer. He said that the Tractor No. AP 8623 was not a "goods vehicle" as defined in the Road Traffic Ordinance. Therefore he submitted that in order to arrive at the laden weight of the goods the tractor should not have been weighed together with the trailer. The learned Magistrate however did not accept this submission and held that the prosecution had made out a *prima facie* case against the respondents. She accordingly called for the defence. The respondents were convicted after they chose to remain silent and called no witnesses in defence. The 1st respondent was fined RM1,000 in default 4 months imprisonment and the 2nd respondent was fined RM800 in default 2 months' imprisonment.

The respondents appealed and after hearing arguments from both parties the learned Judge allowed the appeal and ordered the fines to be refunded.

In his grounds of judgment the learned Judge said that the only issue in the appeal was whether the two vehicles, should be weighed together to get the maximum permissible laden weight. He held that the tractor was not a goods vehicle within the definition in s. 2 of the Road Traffic Ordinance 1958. He said that the tractor and the trailer had separate carrier's licences *albeit* with the same reference numbers but with different serial numbers. The vehicles also had separate insurance coverage, registration books, separate road tax and he accordingly held that they were actually two separate vehicles. In the event, he came to the conclusion that since the vehicles could be uncoupled from one another the trailer should have been detached and weighed separately by itself.

In his submission before us, in this reference, learned Counsel for the respondents made substantially the same submissions he had made before the learned Magistrate and the learned Judge. As to question No. 2 he conceded that a trailer is an articulated vehicle as defined by r. 2 of the Motor Vehicles (Construction and Use) Rules 1959 - "articulated vehicle" means a motor vehicle drawing a semi-trailer. But he submitted that the tractor cannot be described as a goods vehicle within the definition of s. 2 of the Road Traffic Ordinance 1958. Therefore it was submitted that the tractor should not have weighed together with the trailer to arrive at the maximum permissible laden weight.

In his submission, Counsel for the respondents relied strongly on the Singapore case of *Overseas Chinese Transport Company Ltd. v. Public Prosecutor* [1965] MLJ 260. In that case a motor vehicle was drawing a trailer when it was stopped at the Woodlands check point. The trailer was licensed as a goods vehicle in Singapore but the drawing motor vehicle was not licensed. The owners of the motor vehicle were convicted on a charge for using it as a goods vehicle without a licence. On appeal Winslow J considered s. 2 of the Road Traffic Ordinance of Singapore which defines a goods vehicle as follows:

"Goods vehicle" means a motor vehicle constructed or adapted for use for the carriage of goods or a trailer so constructed or adapted.

And the learned Judge held that "as the motor vehicle in this case was neither constructed nor adapted for the carriage of goods the conviction must be quashed."

Counsel for the respondents before us submitted that this Singapore case should be accepted in deciding whether the tractor comes within the definition of goods vehicle within s. 2 of our Road Traffic Ordinance 1958. He says that the definition of a goods vehicle in the Singapore Road Traffic Ordinance is *pari materia* with the definition in our Road Traffic Ordinance.

We are however unable to accept Counsel's submission on this point. In the definition in s. 2 in our Road Traffic Ordinance a goods vehicle means:

(a) any motor vehicle constructed or adapted for use for the carriage of goods, and

(b) any motor vehicle not so constructed or adapted when used for the carriage of goods solely in addition to passengers.

It is quite clear that the above definition of a goods vehicle is certainly not in *pari materia* with the definition in s. 2 of the Singapore Road Traffic Ordinance. In our view the tractor comes within definition (b) above as it is a motor vehicle which was being used for the carriage of goods.

It is pertinent also to examine the contents of the carrier's licences issued in respect of the tractor and the trailer both dated 25 September 1979 and numbered CL 2799. In the licence for the Tractor No. AP 8623 the 2nd respondents are authorised to use the tractor for the carriage of their goods with the restriction that it shall be used only to draw Trailer No. T/A 1448.

The carrier's licence issued in respect of the Trailer No. T/A 1448 sets out the maximum permissible laden weight at 360 cwts combined and restricts its use to the carriage of goods only when it is drawn by the Tractor No. A/P 8623.

The contents of these two licences must be read together. It must be stressed here that the tractor was licensed as a carrier solely for the purpose of drawing the trailer. And the trailer was licensed only to be drawn by the tractor. The maximum permissible laden weight of 360 cwts must be taken as the weight of the whole unit i.e. the tractor and the trailer as the condition in the carrier's licence of the trailer specifically refers to 360 cwts as the combined weight. We are of the view that the learned Judge did not give adequate consideration to the contents of the two licences. He did mention the 360 cwts as the combined weight of the trailer's licence but thought little of it. Clearly reading these two licences together we are of the view that the maximum permissible laden weight of the tractor and the trailer was not to exceed 360 cwts and they were quite rightly weighted together.

In the event therefore we answer all the four questions in the affirmative and acting under s. 66(4) of the Courts of Judicature Act we uphold the convictions and fines imposed on the respondents by the learned Magistrate.

Also found at [1989] 2 CLJ 397